

offering or providing on the effective date of this chapter. Any such telecommunications carrier, however:

- (1) Before substantially altering, modifying, or changing the nature or scope of authorized telecommunications services provided under its existing CPCN; or
- (2) Before adding or expanding the nature or scope of telecommunications services beyond the authority contained in its existing CPCN;

shall file a separate tariff for the proposed, modified, or new service, unless ordered otherwise by the commission. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-7.5, 269-16.9, 269-34 to 43)

§6-80-18 Issuance or denial of certification.

(a) The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

(b) Where the telecommunications carrier is exempted by federal law from entry regulation by the State, the commission shall issue a certificate of registration to the carrier upon the filing of an application that complies with §6-80-17(d).

(c) No hearing is required for the granting or denial of an application for a COA; provided that the commission may hold a hearing before it grants or denies an application, if it deems a hearing to be appropriate.

(d) Any COA or COR issued by the commission shall:

- (1) Specify the telecommunications service to be provided;
- (2) Delineate the geographic area in which the service is to be provided; and
- (3) Define the terms and conditions of the COA or COR as the commission may reasonably prescribe.

(e) Unless otherwise ordered by the commission, no COA or COR issued by the commission to any telecommunications carrier may be construed as granting a monopoly or exclusive privilege, franchise, or charter for the provision of telecommunications service.

(f) Unless otherwise ordered by the commission, the issuance of a COA or COR to any telecommunications carrier does not preclude the commission from issuing any additional certificates of authority or registration to any other person seeking to offer, initiate, or provide the same or similar telecommunications service in the same geographic area.

(g) Except as otherwise provided by federal or State law, and in order to protect the public interest and to preserve the State's commitment to universal service, the commission may establish reasonable terms and conditions for the entry of telecommunications carriers into the State. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-7.5, 269-16.9, 269-34 to 43)

§6-80-19 Suspension or revocation. To preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of

telecommunications services, and safeguard the rights of customers, upon the petition of any telecommunications carrier, any customer, or any other person, or the commission's own motion, the commission may, after notice and hearing, suspend or revoke, in whole or in part, a COA or COR, if the certificate holder:

- (1) Fails to make contributions required by the universal service fund;
- (2) Fails to provide adequate telecommunications service;
- (3) Fails to maintain access to emergency services; or
- (4) Violates any applicable:
 - (A) Federal laws or regulations; or
 - (B) State laws or commission orders or rules. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-7.5, 269-16.9, 269-34 to 43)

§6-80-20 Temporary certificate of authority - carrier of last resort. (a) The commission, upon a written application, may issue a temporary COA to a qualified applicant. A temporary COA is a certificate of limited authority, authorizing a telecommunications carrier only to participate in the bidding process for the selection of a carrier of last resort for a particular high cost area as set forth in section 6-81-55.

- (b) An application for a temporary COA must:
 - (1) Include information on the applicant's financial ability to render the proposed service, including a copy of the most recent audited financial statement and, if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement; and
 - (2) Comply with all applicable commission orders and rules.

§6-80-20

(c) The commission shall issue a temporary COA, if it finds that the applicant:

- (1) Possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service; and
- (2) Is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission.

The commission may grant, deny, or reject (as incomplete) any application for a temporary COA, with or without a hearing.

(d) A temporary COA expires upon the selection of a carrier of last resort for the high cost area at issue. If a telecommunications carrier temporarily certified is selected as the carrier of last resort, the commission, on its own motion or upon the request of the carrier, shall issue a COA to the carrier, provided the carrier continues to meet the requirements of subsection (c). [Eff]
(Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS
§§269-7.5, 269-16.9, 269-34 to 43)

§§6-80-21 to 24 (Reserved)

SUBCHAPTER 3

CLASSIFICATION OF SERVICES

§6-80-25 Classification of services. (a) All telecommunications services offered, initiated, or provided by telecommunications carriers within the State shall be classified as:

- (1) Fully competitive;
 - (2) Partially competitive; or
 - (3) Noncompetitive.
- (b) Any single telecommunications carrier may seek to offer, initiate, or provide any or all classes of services, unless ordered otherwise by the commission.
- (c) A service is fully competitive, if:
- (1) There are multiple providers of the service who can enter and exit the market with ease, with none of the providers being dominant in terms of sales;
 - (2) All customers for the service have access to information about prices and service quality; and
 - (3) All customers have the ability and incentive to obtain service from the most efficient provider at a price equal to the economic cost of the service.
- (d) In determining whether a service is fully competitive or partially competitive, the commission shall consider the following factors:
- (1) The identity, number, and size of any alternative carriers offering the same or equivalent service;
 - (2) The extent to which service of comparable quality is readily available from more than one carrier in the relevant market;
 - (3) The ability of alternative carriers to make equivalent or substitute services readily available at competitive rates, terms, and conditions;
 - (4) Other indicators of market power, including the various carriers' shares of the relevant market, the growth or shifts in market share, the ease of market entry and exit, and any affiliation between or among alternative carriers providing the same or similar service;
 - (5) Benefits to the public interest; and
 - (6) Any other factors deemed relevant by the commission.

The degree and extent of competition determine whether the telecommunications service is fully competitive or partially competitive. Partial competition constitutes a classification that is transitional to full competition. Any service not classified as fully or partially competitive is noncompetitive.

(e) A telecommunications service may be classified as fully competitive, partially competitive, or noncompetitive for the entire State, some geographical area therein, including an exchange service area, or for a specific customer or class or group of customers.

(f) Notwithstanding subsections (c) and (d):

- (1) A service that is available to a substantial majority of potential customers in the relevant market from more than one carrier is deemed partially competitive, unless otherwise ordered by the commission; and
- (2) Specific services provided through resale are fully competitive for the reseller of the specific service, unless otherwise ordered by the commission.

(g) No telecommunications carrier, certified by the commission to provide intrastate telecommunications services, is precluded from offering or providing any competitive or noncompetitive service, provided the service is tariffed in accordance with subchapter 4, unless ordered otherwise by the commission.

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-26 Reclassification of services. The commission may reclassify any telecommunications service from one category to another, if such reclassification is in the public interest.

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-27 Procedures for classifying or reclassifying a service. (a) The classification or reclassification of a telecommunications service as fully competitive, partially competitive, or noncompetitive may be initiated by the filing of a petition by any telecommunications carrier or the consumer advocate, or upon the commission's own motion.

(b) If initiated by a petition, at a minimum, the petition must:

- (1) Explain and state the reasons for the proposed classification or reclassification; and
- (2) Include data, documents, and other evidence to support the proposed classification or reclassification.

The commission may direct the petitioner, consumer advocate, or any other telecommunications carrier to provide any additional information deemed relevant by the commission.

(c) Upon review and investigation, the commission may:

- (1) Reject the petition as incomplete; or
- (2) Deny or approve the proposed classification or reclassification, in whole or in part, with or without a hearing.

(d) In any classification or reclassification proceeding, the commission may order or direct the intervention or participation of any telecommunications carrier or any other person it deems appropriate; provided that the consumer advocate is a party to the proceeding as a matter of course.

(e) In a classification or reclassification proceeding initiated by a petition, the petitioner bears the burden of demonstrating that the proposed classification or reclassification is appropriate.

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

SUBCHAPTER 4

COSTS, RATES, AND PRICING

§6-80-32 Pricing - fully and partially competitive services. (a) Pricing for telecommunications services classified as fully competitive:

- (1) Is exempt from rate of return regulation;
- (2) Is not subject to a price ceiling;
- (3) Must be offered on prices, terms, and conditions reflected in a tariff filed with the commission;
- (4) May not be set below the total service long run incremental cost of providing the service, calculated as provided in §6-80-35(d); and
- (5) Must not result in the cross-subsidization of any fully competitive service from any noncompetitive service as proscribed in §6-80-35.

(b) Pricing for telecommunications services classified as partially competitive:

- (1) May be subject to flexibility and other than rate of return regulation, as authorized by the commission. Such alternative regulation may include price floors and price ceilings;
- (2) Must be offered on prices, terms, and conditions reflected in a tariff filed with the commission;
- (3) May not be set below the total service long run incremental cost of providing the service, calculated as provided in §6-80-35(d); and
- (4) Must not result in the cross-subsidization of any partially competitive service from any noncompetitive service as proscribed in §6-80-35. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-33 Pricing - noncompetitive services.

Pricing for noncompetitive services:

- (1) Is subject to rate of return regulation or to such other form of pricing, as authorized by the commission;
- (2) Must be cost-based and just and reasonable;
- (3) Must conform to the applicable requirements of §§269-12 and 269-16, HRS; and
- (4) Must not cross-subsidize any competitive service as proscribed in §6-80-35.
[Eff _____] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-16, 269-34 to 43)

§6-80-34 Pricing - resale and exempt services.

Notwithstanding §§6-80-32 and 6-80-33:

- (1) Pricing for services whose rates are fully exempt from state regulation by federal law or regulation is not subject to any restriction; provided that tariffs for those services shall be filed as provided in §6-80-39; and
- (2) Pricing for basic exchange service and pricing on resale of basic exchange service must be cost-based, just, and reasonable.
[Eff _____] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-35 Cross-subsidization prohibited.

(a) Noncompetitive services offered or provided by any telecommunications carrier must not cross-subsidize the telecommunications carrier's competitive services.

(b) Cross-subsidization is deemed to have occurred if:

- (1) Any fully competitive or partially competitive service is priced below the

total service long run incremental cost of providing the service;

- (2) Fully competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs; or
- (3) If fully competitive and partially competitive services, taken as a whole, fail to cover the direct and allocated joint and common costs.

(c) The total service long run incremental cost of a service must include an imputation of an amount equal to the contribution that the telecommunications carrier receives for the use of the carrier's noncompetitive inputs by other telecommunications carriers to provide the same or equivalent service.

(d) The total service long run incremental cost of a service is the sum of the:

- (1) The tariffed rates for the noncompetitive services or noncompetitive service elements, or their functional equivalents, that the carrier itself utilizes to provide the service;
- (2) Long run incremental costs of facilities and functionalities that are utilized but not specifically tariffed; and
- (3) Long run incremental costs of any other identifiable element associated with the provision of the service.

(e) A telecommunications carrier may not offer a noncompetitive telecommunications service jointly with any fully or partially competitive service or with any interstate, international, or other service not within the jurisdiction of the commission, except upon the commission's express approval. The commission's approval is subject to a satisfactory showing by the telecommunications carrier seeking to offer such joint services that the costs of the fully or partially competitive service or the costs of the interstate, international, or other non-jurisdictional service are not subsidized by the noncompetitive service. An application for approval to offer any such joint services must be filed with the commission not less

than thirty days before the joint services are marketed, sold, or advertised. [Eff]
 (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43,
 47 U.S.C. §254)

§6-80-36 Separate subsidiary for competitive service. The commission may order or direct a telecommunications carrier that offers or provides both competitive and noncompetitive services to establish a fully separate subsidiary to provide all or part of its competitive service where:

- (1) No less costly means is available and effective in fully and properly identifying and allocating costs between the carrier's competitive and noncompetitive services, and the incremental cost of establishing and maintaining such subsidiary would not require increases in rates or charges to levels that would effectively preclude the offering or provision of the affected competitive service;
- (2) Establishment of a subsidiary is deemed necessary by the commission to avoid or prevent cross-subsidization; or
- (3) Establishment of a subsidiary is deemed necessary by the commission to protect the public interest. [Eff]
 (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-37 Nondiscrimination in the provision of telecommunications services. A telecommunications carrier shall not unreasonably discriminate among its customers in offering or providing any competitive or noncompetitive telecommunications service. It shall offer or provide its service under the same rates, terms, and conditions to all customers similarly

§6-80-37

situated or within a reasonably constituted class.
[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-38 Refunds or credits. If the commission finds that any class of customers of a noncompetitive service has paid excessive rates because of below cost pricing of any fully competitive or partially competitive service, the commission may order refunds or credits to the affected customers of the noncompetitive service. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43)

§6-80-39 Tariffs. (a) All telecommunications service tariffs filed by a telecommunications carrier with the commission, in effect before the effective date of this chapter, remain in full force and effect, unless in conflict with any provisions of this chapter. This chapter supersedes any conflicting provisions incorporated in any telecommunications service tariffs on file with the commission.

(b) Subject to subsection (a), no telecommunications carrier shall offer, initiate, or provide any telecommunications service, at wholesale or retail, unless the carrier files with the commission a tariff, subject to the prices, terms, conditions, and requirements set forth in:

- (1) Section 269-16, HRS, if applicable and as implemented by this subchapter;
 - (2) All applicable commission orders and rules, including this chapter; and
 - (3) The applicable CPCN, COA, or COR.
- (c) Any tariff filed with the commission by a telecommunications carrier must, at a minimum:
- (1) Describe the service and, if applicable, define the classes and grades of service to be offered, initiated, or provided;

- (2) Indicate whether the service to be offered, initiated, or provided is fully competitive, partially competitive, or noncompetitive;
- (3) Contain the applicable price of the service;
- (4) Set forth the terms and conditions under which service will be provided;
- (5) Reference all applicable agreements; and
- (6) Be supported by any applicable cost studies, pursuant to §6-80-42.

(d) All tariffs filed with the commission are subject to public inspection and photocopying during the commission's regular business hours. The commission may assess a reasonable fee for photocopying. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-8, 269-16, 269-34 to 43)

§6-80-40 Denial or approval of tariffs. (a) A tariff for a fully competitive service is effective upon its filing with the commission. A tariff for a service whose rates are fully exempt from state regulation by federal law or regulation is effective when the service is publicly offered; provided that the tariff must be filed with the commission not later than thirty days after the service is first offered. The commission may, at any time, upon its own motion or upon a motion filed by any interested party or the consumer advocate, investigate such tariffs, if deemed necessary to protect the public interest. The commission shall conduct such investigation on an expedited basis.

(b) A telecommunications carrier shall file its tariff for any partially competitive service or noncompetitive service at least thirty days before the effective date of the proposed service. The commission may suspend the operation of the tariff and investigate the justness and reasonableness of the tariff. The commission may conduct a hearing to aid its investigation. The commission shall conduct

§6-80-40

its investigation on an expedited basis. With or without such suspension, the commission may:

- (1) Deny or reject the tariff; or
- (2) Allow the tariff to take effect.

(c) Any person may protest or oppose any proposed tariff filing for a partially competitive or noncompetitive service by filing a written protest with the commission and serving a copy of the protest on the telecommunications carrier proposing the tariff not less than fifteen days before the proposed effective date of the tariff. The carrier may file a reply to the protest not later than five days before the proposed effective date of the tariff with proof of service of a copy of the reply on the protestor. A written protest does not require the commission to suspend the operation of the tariff, but may be considered by the commission in deciding whether to:

- (1) Deny or reject the tariff; or
- (2) Allow the tariff to take effect.

(d) The commission may, in its discretion and for good cause shown, allow any tariff for a partially competitive or noncompetitive service to become effective before the expiration of the thirty-day period provided in subsection (b).

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-8, 269-16, 269-34 to 43)

§6-80-41 Proposed increases or decreases in prices. Section 6-80-40 applies to any proposed increase or decrease in prices for fully competitive, partially competitive, and noncompetitive services.
[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-8, 269-16, 269-34 to 43)

§6-80-42 Cost studies. (a) The incumbent telecommunications carrier shall complete and submit a cost study for all tariffs of noncompetitive services, unless ordered otherwise by the commission.

(b) A non-incumbent telecommunications carrier need not submit a cost study for any tariff, whether for fully competitive, partially competitive or noncompetitive service, unless ordered otherwise by the commission.

(c) The commission may, on its own initiative or at the request of a telecommunications carrier or the consumer advocate, order any telecommunications carrier to complete and submit a cost study to the commission for any service.

(d) Any cost study, where required, must include an analysis of the total service long run incremental cost underlying the service, unless ordered otherwise by the commission. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-8, 269-34 to 43)

§§6-80-43 to 46 (Reserved)

SUBCHAPTER 5

ACCESS, INTERCONNECTION, UNBUNDLING, AND RESALE

§6-80-47 Intrastate access, interconnection, unbundling, and resale - request for. (a) Upon a bona fide request of another carrier, a telecommunications carrier shall:

- (1) Unbundle its network facilities, functions, and services, to the extent technically feasible and economically reasonable;
- (2) Make its facilities, functions, and services available, on an unbundled basis, for intrastate access and interconnection by the other carrier, at any technically feasible and economically reasonable point within the carrier's network;

§6-80-47

(3) Offer such facilities, functions, and services for resale or shared use, to the extent technically feasible and economically reasonable; and

(4) Make available and offer such facilities, functions, and services of such quality at least equal to that provided by the carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier to which it provides interconnection.

(b) Upon receipt by a telecommunications carrier of a bona fide request for access, interconnection, or unbundling from another carrier, the carriers shall, within thirty days following receipt of the request, attempt to reach agreement concerning responsibility for any costs and expenses incurred by the requested carrier in analyzing and evaluating the technical feasibility of the request. If the carriers are unable to reach agreement within thirty days, the carrier initiating the request for access, interconnection, or unbundling shall notify the commission and the consumer advocate in writing of the impasse. Following notification, the commission may take any action it deems appropriate, including:

(1) Resolving the issues in dispute; or

(2) Directing the carriers to resume negotiations.

(c) A telecommunications carrier that denies the request of another carrier for access, interconnection, or unbundling on the grounds that the requested access, interconnection, or unbundling is not technically feasible or is not economically reasonable bears the burden of demonstrating that fact. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-48 Exemption for rural telephone carrier.

(a) The requirements of §6-80-47 do not apply to a rural telephone carrier unless:

- (1) The carrier has received a bona fide request for access, interconnection, unbundling, or resale; and
 - (2) The commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the provisions of chapter 6-81.
- (b) A carrier making a request of a rural telephone carrier for access, interconnection, or unbundling shall notify the commission of its request. Within one hundred twenty days of the receipt of the notice of the request, the commission shall terminate the exemption, if it finds that the request is not unduly economically burdensome, is technically feasible, and is consistent with the provisions of chapter 6-81. Upon termination of the exemption, the commission shall establish a schedule for compliance with the request that is consistent in time and manner with FCC regulations.
- (c) The commission may require the requesting carrier or the rural telephone carrier to submit such information as the commission deems necessary in making a determination whether to terminate the exemption. The commission may make its determination, with or without a hearing. [Eff]
 (Auth: HRS §269-6) (Imp: 47 U.S.C. §251)

§6-80-49 Intrastate access, interconnection, unbundling, and resale - standards. The following standards apply to intrastate access, interconnection, unbundling, and resale:

- (1) Telecommunications carriers shall offer or provide such services on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and on a competitively neutral and cost-based basis, which may include a reasonable profit;
- (2) A telecommunications carrier may not offer or provide any such services at excessive

prices; and, except as otherwise provided in this chapter, no telecommunications carrier is required to offer or provide any such services at prices below total service long run incremental cost, provided that the commission may direct the carrier to provide a discount on unbundled elements in cases in which the full functionality used by the carrier in the provision of its service is offered to other carriers on an impaired basis;

- (3) Exchange networks shall be interconnected on a seamless and transparent basis, so that customers can seamlessly receive calls that originate on another carrier's network and place calls that terminate on another carrier's network without dialing extra digits;
- (4) Telecommunications carriers shall be interconnected in a manner that gives the carriers seamless integration into, and use of, the signaling and interoffice networks at reasonable rates, including access to switches, signaling systems, and other facilities, or information associated with originating and terminating communications or otherwise facilitating interoperability for any communication carried by the network facilities;
- (5) Access, interconnection, and unbundling must maintain the technical and economic integrity of the network of a telecommunications carrier;
- (6) To ensure inter-operability of networks and to maintain the integrity of each telecommunications carrier's network, the telecommunications carriers shall abide by the technical interconnection standards, including technical engineering, operations, and maintenance standards, as established by national telecommunications industry organizations;

- (7) Telecommunications carriers shall make their networks and facilities available for access and interconnection to other carriers at:
 - (A) Central offices;
 - (B) Tandem offices;
 - (C) Any other switching points; or
 - (D) Any mutually agreed upon or technically feasible meet-point;
- (8) The cost of constructing, operating, or maintaining any interconnecting network or facility shall be incurred by, and shared between, the interconnecting carriers on an equitable, cost-based basis;
- (9) A telecommunications carrier shall provide for physical collocation of equipment necessary for access or interconnection at the carrier's premises, except that the carrier may provide for virtual collocation if it demonstrates that physical collocation is not practical for technical reasons or due to space limitations. Nothing in this paragraph prohibits carriers from voluntarily entering into agreements for the virtual collocation of equipment;
- (10) A telecommunications carrier shall make available to a requesting carrier, to the extent technically feasible and economically reasonable, those unbundled network components, functions, and services that the requesting carrier needs for purposes of providing telecommunications services. A telecommunications carrier may not require or compel a requesting carrier to take any network component, function, or service that the requesting carrier does not need for its purposes in providing telecommunications services;
- (11) Exchange facilities, functions, and services shall be offered and made available for resale or shared use, provided that:

- (A) Residential access lines may not be resold to offer, initiate, or provide business services;
 - (B) Resellers may not use residential access lines to offer, initiate, or provide business services; and
 - (C) The carrier offering a telecommunications service for resale or shared use may impose reasonable restrictions upon its resale or sharing as may be set forth in the carrier's tariff;
- (12) All telecommunications services sold at retail to customers that are not telecommunication carriers are subject to resale at wholesale rates; and
- (13) The wholesale rates of resold services shall be determined on the basis of the retail rates, excluding that portion of the retail rates attributable to any marketing, billing, collection, and other costs that will be avoided by the resale of the services. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-50 Negotiation. Telecommunications carriers shall enter into negotiations on the prices, terms, and conditions for access, interconnection, and unbundled facilities, functions, and services and for the resale of unbundled facilities, functions, and services, except that the prices for access and unbundled facilities, functions, and services and for the resale of unbundled facilities, functions, and services must be tariffed, as provided in subchapter 4. The carriers shall negotiate in good faith and use their best efforts to reach agreement.
[Eff _____] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-51 Network termination.

Telecommunications carriers shall reciprocally compensate each other for the costs associated with transporting and terminating telecommunications traffic on their respective networks. The carriers shall negotiate in good faith and use their best efforts to reach agreement on the prices, terms, and conditions for terminating traffic on their respective networks. Telecommunications carriers shall develop terms and conditions that are just and reasonable and provide for fair, nondiscriminatory, and cost-based rates, based on a reasonable approximation of the additional costs of terminating such traffic. Compensation agreements may include "bill and keep" and any other mutual compensation arrangements.

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-52 Mediation. (a) Any party negotiating an agreement for access, interconnection, unbundling, or network termination may, at any point in the negotiation, petition the commission in writing for the commission to participate in the negotiation and mediate any differences arising in the course of the negotiation. Such a petition must, to the extent practicable and applicable, conform to the provisions of chapter 6-61, subchapter 2.

(b) The petitioner shall serve a copy of the petition for mediation on all parties to the negotiation and on the consumer advocate not later than by the date on which the petition is filed with the commission. A non-petitioning party to the negotiation may file with the commission a response to the petition within ten days following the filing of the petition for mediation. [Eff]

(Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §252)

§6-80-53 Arbitration. (a) During the period from the one hundred thirty-fifth to the one hundred sixtieth day (inclusive) following the date upon which a carrier receives a bona fide request for access, interconnection, or unbundling or for a network termination agreement, the carrier or any other party to the negotiation may petition the commission in writing for the commission to arbitrate any unresolved issues. Such a petition must:

- (1) To the extent practicable and applicable, conform to the provisions of chapter 6-61, subchapter 2;
- (2) Set forth:
 - (A) The unresolved issues;
 - (B) The position of each party relating to those issues; and
 - (C) Any other issues discussed and resolved by the parties; and
- (3) Include all relevant documents and materials relating to subsection (2).

The commission may request from any of the parties to the negotiation further information or materials necessary for the commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the commission, the commission may then proceed on the basis of the best information available to it, regardless of the originating source.

(b) The petitioner shall serve a copy of the petition for arbitration on all parties to the negotiation and on the consumer advocate not later than by the date upon which the petition is filed with the commission. A non-petitioning party to the negotiation may file with the commission a response to the petition within twenty-five days following the filing of the petition for arbitration.

(c) The commission shall limit its consideration and any response to a petition for arbitration to the issues set forth in the petition and the response, if any. The commission shall resolve each unresolved

issue set forth in the petition and the response, if any, by imposing appropriate conditions upon the parties as required to implement access, interconnection, unbundling, and network termination, not later than nine months following the date upon which the carrier received the bona fide request for access, interconnection, or unbundling, or for a network termination agreement.

(d) In resolving by arbitration any unresolved issues and imposing appropriate terms and conditions upon the parties, the commission shall:

- (1) Ensure that such resolution and conditions meet the requirements of:
 - (A) 47 U.S.C. §251;
 - (B) FCC regulations implementing 47 U.S.C. §251; and
 - (C) The applicable provisions of this chapter;
- (2) Establish any rates for access, interconnection, unbundling, or network termination that are just and reasonable, cost-based, and nondiscriminatory and in accordance with:
 - (A) 47 U.S.C. §251;
 - (B) FCC regulations implementing 47 U.S.C. §251; and
 - (C) The applicable provisions of this chapter; and
- (3) Provide a schedule for the implementation of the terms and conditions by the parties to the agreement. [Eff]
 (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §§251, 252)

§6-80-54 Approval of agreement by the commission. (a) All agreements concerning access, interconnection, unbundling, and network termination adopted by negotiation or arbitration, including any agreement negotiated and adopted before the effective date of this chapter, must be submitted to the

commission for review and approval. Upon the submission of an agreement to the commission for review and approval, a copy of the agreement shall be served on the consumer advocate.

(b) The commission shall approve or reject the agreement, with written findings as to any deficiencies. The commission may only reject:

- (1) An agreement, or any portion of the agreement, adopted by negotiation if it finds that:
 - (A) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
 - (B) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity; or
- (2) An agreement, or any portion of the agreement, adopted by arbitration if it finds that the agreement, or any portion of the agreement, does not meet the requirements of:
 - (A) 47 U.S.C. §251;
 - (B) FCC regulations implementing 47 U.S.C. §251; or
 - (C) The applicable provisions of this chapter, including provisions relating to service quality standards.

(c) The commission shall approve or reject the agreement within ninety days after submission by a party of an agreement adopted voluntarily by negotiation, or within thirty days after submission by a party of an agreement adopted by arbitration. If the commission fails to act within the prescribed time period, the agreement is deemed approved.

(d) Each approved agreement will be available for public inspection and photocopying within ten days after the agreement is approved by the commission. The commission may charge a reasonable and non-discriminatory fee to the parties to the agreement to

§6-80-60

cover the costs of approving and filing the agreement. The commission may also assess a reasonable photocopying fee.

(e) All modifications, revisions, or amendments to any agreement concerning access, interconnection, unbundling, and network termination are subject to commission review and approval, as provided in this section. [Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §251, 252)

§§6-80-55 to 59 (Reserved)

SUBCHAPTER 6

NUMBER PORTABILITY AND DIRECTORY SERVICES

§6-80-60 Availability of number portability.

(a) Telephone number portability shall be implemented in the State when a technically feasible and economically reasonable solution has been developed by the telecommunications industry.

(b) Until a number portability solution has been developed by the telecommunications industry, as an interim number portability solution, interconnecting telecommunications carriers, including the incumbent carrier, shall, unless shown to be economically unreasonable, make available, at tariffed rates, based on total service long run incremental cost, and on tariffed terms and conditions, remote call forwarding where remote call forwarding is available.

[Eff] (Auth: HRS §§269-6, 269-34 to 43) (Imp: HRS §§269-34 to 43, 47 U.S.C. §251)